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August 24, 1983

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U.S. Department of Justice  
10th & Pennsylvania Ave., N.W.  
Washington, D.C. 20530

Re: United States, et al. v. Reilly Tar  
& Chemical Corporation, et al.  
Our File Number 3857-011  
Court File Number 4-80-Civ. 469

Gentlemen:

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All Counsel  
Page 2  
August 24, 1983

Enclosed and served upon each of you by United States mail is the City of St. Louis Park's Answers to Interrogatories of Reilly Tar & Chemical Corporation. A copy of the last page showing the signature of an official of the City will be served upon each of you shortly.

Very truly yours,

Allen Hinderaker

AWH/jro/0174v

Enclosure

~~cc.~~ Robert E. Leininger, Esq.

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

UNITED STATES OF AMERICA, )

Plaintiff, )

and )

STATE OF MINNESOTA, by its )  
Attorney General Hubert H. )  
Humphrey, III, its Department )  
of Health, and its Pollution )  
Control Agency, )

Plaintiff-Intervenor, )

vs. )

REILLY TAR & CHEMICAL )  
CORPORATION; HOUSING AND )  
REDEVELOPMENT AUTHORITY OF )  
ST. LOUIS PARK; OAK PARK )  
VILLAGE ASSOCIATES; RUSTIC )  
OAKS CONDOMINIUM, INC.; and )  
PHILIP'S INVESTMENT CO., )

Defendants, )

and )

CITY OF ST. LOUIS PARK, )

Plaintiff-Intervenor, )

vs. )

REILLY TAR & CHEMICAL )  
CORPORATION, )

Defendant, )

and )

CITY OF HOPKINS, )

Plaintiff-Intervenor, )

vs. )

REILLY TAR & CHEMICAL )  
CORPORATION, )

Defendant. )

Civil No. 4-80-469

CITY OF ST. LOUIS PARK'S  
ANSWERS TO INTERROGATORIES  
OF REILLY TAR & CHEMICAL  
CORPORATION

TO: Reilly Tar & Chemical Corporation, and its counsel,  
Edward Schwartzbauer, Esq., Dorsey & Whitney, 2200  
First Bank Place East, Minneapolis, Minnesota 55402

For its answers to the Interrogatories of Reilly Tar &  
Chemical Corporation ("Reilly"), the City of St. Louis Park  
("City") states:

GENERAL OBJECTIONS

1. The City objects to each interrogatory that requests enumeration of "all facts", "each person", "each document", "each oral communication or other event" or "each decision" relating to a particular area of inquiry as being overly broad, vexatious and not within the contemplated purposes of the Federal Rules of Civil Procedure relating to written interrogatories. The City will, in all instances, undertake to provide the basic information requested in full and fair responses in accordance with its obligations under the Federal Rules of Civil Procedure.

2. The City objects to any interrogatory that requests privileged communication between attorney and client. In addition, those interrogatories which ask for responses which are or contain the work product of counsel or which reflect decisions made in anticipation of or in preparation for litigation or trial by counsel for the City will not be answered. Documents protected from disclosure are not identified in these answers.

3. The City objects to Definition J as being overly broad, vexatious and not within the contemplated purposes of the Federal Rules of Civil Procedure relating to written interrogatories. As to the identity of past or present Reilly employees or agents, the

City submits that Reilly Tar knows the full "identity" of such persons, as that word is defined by Definition J. To the extent that the addresses, employers and job titles of persons named in these interrogatory answers are readily obtainable by the City they will be provided.

4. The City objects to Definition L as being overly broad, vexatious and not within the contemplated purposes of the Federal Rules of Civil Procedure relating to written interrogatories. Identification of addresses and present locations and custodians of documents can be ascertained by reviewing the documents otherwise identified and the document number stamped on the documents.

5. The City objects to Definition M as being overly broad, vexatious and not within the contemplated purposes of the Federal Rules of Civil Procedure relating to written interrogatories. To the extent that the information sought by Definition M may be obtained by review of identified documents or have been the subject of oral deposition inquiry, they will not be further elaborated upon. Privileged communications will not be identified.

#### INTERROGATORY ANSWERS

##### QUESTION:

1. With respect to the denial in paragraph 2 of your Reply to paragraph 2 of the Counterclaim of Reilly Tar & Chemical Corporation that: "For many years prior to 1972, the City either negligently or intentionally, and in an unreasonable manner, diverted the flow of surface waters which fell or drained onto the streets of the City so as to cause them to flood the Reilly property, which in turn caused ditches and basins to overflow and

wastes to be carried to the property to the south of Reilly's plant,"

(a) Fully state the factual basis for this denial, including all facts which support or tend to support this denial,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

1. (a) The flow of surface waters onto Reilly's property was the result of the normal pattern of surface water drainage to lowlying areas. The Reilly Tar site was situated at low elevations subjecting it to the natural flow of surface waters and the potential for flooding from the earliest days of Reilly Tar's ownership. Any harm to Reilly resulting from any increase in the normal flow of surface water across the Reilly property was outweighed by the utility of the commercial and residential development of the City. The timing and order of storm sewer development within the City of St. Louis Park was a matter within the legislative discretion of the City Council. Obviously, many factors are relevant to that legislative process -- both economic and social. Development of storm sewers servicing an area including the Reilly Tar site was impeded during Reilly Tar's ownership of that site because of concern that the contaminated

soils on the Reilly Tar site would pollute any storm sewer system. The City was required to avoid pollution of Minnehaha Creek; which would result from construction of a storm sewer system that would discharge into Minnehaha Creek. The continual discharge of pollutants onto the Reilly site impeded construction of the storm sewer because a storm sewer collecting surface water from the site would have carried the pollutants into Minnehaha Creek.

See also answers to interrogatories 16, 17 and 19.

(b) See persons identified in answers 16(b), 17(b) and 19(b).

(c) See documents identified in answer 16(b).

(d) None that the City is presently aware of.

QUESTION:

2. With respect to the denial in paragraph 2 of your Reply to paragraph 3 of the Counterclaim of Reilly Tar & Chemical Corporation that: "Since 1972, the former Reilly property has been in the control of the City," and that "the City has caused roads and sewers to be constructed in the immediate vicinity of the Reilly deep well at times when the well was left open and unprotected, resulting in any alleged contamination of the drinking water aquifers,"

(a) Fully state the factual basis for this denial, including all facts which support or tend to support this denial,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

2. (a) The purchase and sale of Reilly Tar's property was finalized June 19, 1973. Thereafter the property was transferred to the Housing and Redevelopment Authority of the City of St. Louis Park and various redevelopers over a period of time. The Reilly Tar deep well has not been left open and unprotected except during various periods of time when the property was under the ownership and control of Reilly Tar.

Roads and sewers have been constructed in the general area of the Reilly Tar site but the phrase "the immediate vicinity of the Reilly deep well" is vague and ambiguous. Construction of roads and sewers did not cause any tarry material to enter the well nor any contamination of the drinking water aquifers. Tarry material has been in the Reilly deep well for many years and, as the memoranda of Reilly Tar evince, that tarry material came to be in the well during Reilly Tar's ownership of the property. See answers to interrogatories 12 and 13.

(b) The following persons have knowledge of the facts referred to in subpart (a). Other persons may also have knowledge of those facts.

Chris Cherches  
Former City Manager of St. Louis Park  
City Hall  
490 South Center Street  
Reno, NV 89505

Harvey McPhee  
Director of Inspectional Services  
City of St. Louis Park  
5005 Minnetonka Boulevard  
St. Louis Park, MN



William Thibault  
Executive Director  
Housing & Redevelopment Authority of  
St. Louis Park  
5005 Minnetonka Boulevard  
St. Louis Park, MN

Thomas P. Renner  
Consultant and Assistant to the President  
E. H. Renner & Sons Company  
6300 Industry Avenue North  
Ramsey, MN

Home address:

NON-RESPONSIVE

David Rudberg, Director of Public Works  
City Hall  
453 West 12th Avenue  
Vancouver, B.C., Canada V541-V4

NON-RESPONSIVE

Park City Developers, Inc.

Oak Park Village Associates

TCF Service Corporation

NON-RESPONSIVE

See also answers to interrogatories 12(b) and 13(b).

(c) Documents which refer or relate to the facts referred to in subpart (a) include the following. Other documents produced in this litigation may also refer to those facts.

Hold Harmless Agreement, dated June 19, 1973, doc. no. 4000781-82.

Agreement for Purchase and Sale of Real Estate between Housing & Redevelopment Authority and C.M.I. Real Estate & Development, Inc., August 23, 1978.

Agreement for Purchase and Sale of Real Estate  
between Housing and Redevelopment Authority and  
Diversified Equities Corporation, October 4, 1977.

See also answers to interrogatories 12(c) and  
13(c).

(d) None that the City is currently aware of.

QUESTION:

3. With respect to your allegation in paragraph 4 of your Reply that: "The hold harmless agreement does not apply to this matter and has no application to claims of carcinogenic contamination of groundwaters or soils resulting in an endangerment to public health and welfare for that was not the intent of the parties and the agreement is unenforceable by reason of mutual mistake of material facts,"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

3. (a) The hold harmless agreement was entered into in substitution for a dismissal by the Minnesota Pollution Control Agency ("MPCA") of its suit against Reilly Tar for air and surface water contamination ("1970 litigation"). Both parties to the agreement understood at the time that the worst possible consequence from Reilly Tar's operation of its plant was phenolic contamination. Phenolic contamination did not present a risk to

public health. In addition, both parties understood at the time that there was no actual phenolic contamination of the City's drinking water supply. The hold harmless agreement was intended to protect Reilly only from the consequences of air and surface water contamination as they were understood at the time. There was no renegotiation in 1973 of the 1972 purchase price. The City received no additional consideration from Reilly Tar to support any broader interpretation of that agreement. Fair market value was paid for the purchase of the property. In fact, Reilly Tar received more consideration from the City for its property than the market values arrived at by the appraisals commissioned by Reilly Tar.

From the City's first mention of its concern for water contamination until its purchase of Reilly Tar's property, the focus of all discussions between Reilly Tar and the City relative to water contamination was phenols. To the extent that either the State or the City had expressed concern for contamination of City drinking water to Reilly Tar, such concerns were limited to phenolic contamination. Phenols worried City officials because phenols caused a bad taste and odor in drinking water. Phenols were not, however, considered harmful to health. The City's understanding of the limited negative consequences of phenolic contamination was shared by Reilly Tar.

Prior to filing the complaint in the 1970 litigation, on April 20, 1970, the Department of Health reported on tests it made

of samples from certain St. Louis Health Park wells. In all cases, phenolic material was less than 5 micrograms per liter. The report stated that it was inconceivable that phenols discharged to the surface of the ground in the St. Louis Park area could reach the Hinckley sandstone. The Department of Health shared its testing results with Reilly Tar.

Following receipt of the Health Department's findings, the City retained the Rice Division to analyze City wells. Mr. Frazier, of the State Department of Health, had advised Mr. McPhee, City Sanitarian, that the Rice Division had better equipment with which to test the City's well water. On November 5, 1970, the City received the results of the Rice Division's testing. The Division was unable to find any phenols or phenolic compounds in any of the well waters. Thus, there was no evidentiary basis for the City's suspicion that Reilly Tar had possibly polluted the drinking water supply of the City.

In the 1970 litigation, the State and the City sought relief against Reilly Tar for violations of State and City regulations caused by Reilly Tar's air emissions and effluent discharges. That groundwater pollution was not an issue in the 1970 litigation is confirmed by the allegations of the complaint. The complaint did not request that Reilly Tar be ordered to remove phenols or other contaminants from the City's drinking water supply. Nor did the complaint allege any contamination of the City's water by carcinogenic compounds or polynuclear aromatic hydrocarbons.

During the course of the 1970 litigation, the City and the State never demanded that Reilly Tar make any remedial efforts directed at groundwater or the City's drinking water supply. The scope of the 1970 litigation was limited to air pollution and contamination of surface waters resulting from Reilly Tar's plant effluent.

By February 10, 1971, Reilly Tar had decided to close its St. Louis Park facility. Reilly Tar understood that cessation of its air emissions and plant effluents, resulting from the closing of its operations, would resolve the claims asserted against it in the litigation. On July 23, 1971, Thomas Reiersgord, counsel for Reilly Tar, informed the City and the State by letter that the company had determined to close its St. Louis Park plant and concluded "that the issues in the lawsuit are moot except for the possibility of the counter-claim by the company for damages by reason of the flooding by the city". Mr. Reiersgord advised that the lawsuit be stricken from the court's calendar.

Thus, when the City consummated its purchase of Reilly Tar's property in 1973, both parties understood that it had purchased real estate that did not threaten contamination, let alone carcinogenic contamination, of the City's drinking water supply. Testing had revealed there was in fact no contamination. Neither party intended the City to hold Reilly harmless from unknown liability. See also answer to interrogatory 4.

Additionally, Reilly Tar represented to the City that, among other things, it had not contaminated any wells with its product and any soil contamination was limited in its extent of penetration into the soils and would, in any event, naturally improve over time. In fact, these representations were false and were known to Reilly Tar to be false. Tarry materials had been known to be in Reilly Tar's deep well for many years prior to these negotiations. The extent of penetration into the soils was greater than represented and Reilly Tar officials knew the statements regarding natural improvements were incorrect with regard to some compounds and unknown as regard to others. See also answers to interrogatories 6, 7, 8, 9, 10, 11, 12, 13, and 14.

(b) The following persons have knowledge of the facts referred to in subpart (a). Other persons may also have knowledge of those facts.

NON-RESPONSIVE

Susan Workman Cherches  
Reno, NV 89505

Russell Frazier, former chief  
Section of Analytical Service, MDH  
181 N.E. Hartman Circle  
Fridley, MN

NON-RESPONSIVE

Robert Locky  
City Assessor  
St. Louis Park  
5005 Minnetonka Boulevard  
St. Louis Park, MN

E. A. Hickok & Associates  
545 Indian Mound  
Wayzata, MN

James Miceli  
Former Assistant City Manager  
Presently City Manager of  
Del Rio, TX

See also answer to interrogatory 4(b).

(c) Documents which refer or relate to the facts referred to in subpart (a) include the following. Other documents produced in this litigation may also refer to those facts.

Memorandum of Eugene A. Hickok & Associates, Oct. 18, 1969.

Memorandum of MPCA, April 6, 1970, State is present custodian.

Application of City for federal grant to investigate phenolic contamination of groundwater, April 10, 1970, doc. no. 40000082-100.

Report of Frazier to Badalich, April 10, 1970, doc. no. 40000700-703, 2900036--37.

Report of Minnesota Department of Health, April 17, 1970, doc. no. 2900038-39, 7500057.

Memorandum of Justin to Finch, April 21, 1970, doc. no. 302465.

Memorandum of Finch to Ryan, April 21, 1970.

Letter of Chris Cherches to Herb Finch, June 5, 1970, doc. no. 302485-487, 302699-702.

NON-RESPONSIVE

Memorandum of Richard Hennessy to P. C. Reilly,  
July 9, 1970, doc. no. 304314.

NON-RESPONSIVE

Memorandum of Herb Finch to R. J. Boyle, September  
17, 1970, doc. no. 104366-67.

Summons and complaint of State & City against  
Reilly Tar, October 2, 1970, St. Louis Park  
deposition exhibit 15.

Letter of Robert A. Baker, Mellon Institute, to  
Ronald Burd, Rice Division, November 2, 1970, doc.  
no. 40000057-62.

Letter of Ronald Burd, Rice Division to Harvey  
McPhee, November 5, 1970, doc. no. 40000055-56.

Letter of Harvey McPhee to City Manager, November  
16, 1970, doc. no. 40000054-62.

Terms of Real Estate Offer, 1971, doc. no. 306433,  
40000213.

Memorandum of Herb Finch to T. J. Ryan, January  
11, 1971, doc. 301454.

Memorandum of R. J. Boyle to Herb Finch, February  
5, 1971, doc. no. 302121-23.

Memorandum of Herb Finch to T. J. Ryan, February  
13, 1971, doc. no. 301525-27.

NON-RESPONSIVE



Memorandum of P. C. Reilly to Herb Finch, April 19, 1971, doc. no. 306966 or 300966.

Memorandum of Herb Finch to T. J. Ryan, May 6, 1971, doc. no. 303912-914, 303989-991.

NON-RESPONSIVE

Market Value Appraisal of Shenehon-Goodlund-Johnson, Inc. July 29, 1971, doc. no. 401868-906.

Offer to Purchase, July 30, 1971, doc. no. 40000169-171, 40000199-201, 40000207-209.

Letter to Herb Finch from Chris Cherches, July 30, 1971, doc. no. 301481-84, 4000168.

NON-RESPONSIVE

Memorandum of Herb Finch to T. J. Ryan, August 25, 1971, doc. no. 301475.

Memorandum of Robert Lindall to Merritt, Wiik & Johannes, September 21, 1971, doc. no. 3000133.

NON-RESPONSIVE

Memorandum of Herb Finch to T. J. Ryan, December 15, 1971, doc. no. 301458-59.

Memorandum of Herb Finch to T. J. Ryan, January 3, 1972, doc. no. 301455.

Letter of Thomas Reiersgord to Chris Cherches,  
with draft Purchase Agreement attached, January  
20, 1972, doc. no. 40000203-206, 40000203-205,  
208261, 402166.

Memorandum of Robert Locky to Jim Miceli, January  
27, 1972, 40000214-216, 50000308-310.

Memorandum of Harvey McPhee to City Manager,  
February 2, 1972.

Draft Offer to Purchase, February 23, 1972, doc.  
no. 40000193-196.

**NON-RESPONSIVE**

Offer to Purchase, March 29, 1972, doc. no.  
40000188-192, 40000196-198.

**NON-RESPONSIVE**

Summary of Comparable Land Sales, undated, doc.  
no. (SLP #21).

Purchase Agreement, April 14, 1972, doc. no.  
4600479-486, 40000153-162, 40000176-182.

Purchase Agreement, April 14, 1972, doc. no.  
460000479-186, 40000153-162, 40000176-182.

Contract for Deed, October 12, 1972, doc. no.  
449188-191.

Hold Harmless Agreement, June 19, 1973, doc. no.  
4000781-82.

See also documents identified in answer 4(c).

(d) See documents identified in answers 3(c) and  
4(c). Other communications may also have concerned the facts  
referred to in subpart (a).

QUESTION:

4. With respect to the allegation in paragraph 5 of your  
Reply that: "There was no consideration for the hold harmless  
agreement as broadly construed by Reilly Tar;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

4. (a) When the purchase agreement was executed in April 1972 by Reilly and the City, there was no indemnification provision. In June 1973, when the hold harmless agreement was executed, there was no renegotiation of the purchase price agreed to more than a year earlier. The sole reason for the hold harmless agreement was to provide a substitution for the State's nondismissal of a moot lawsuit. See also answer to interrogatory 3(a).

(b) See persons identified in interrogatory 3(b). Other persons may also have knowledge of the facts referred to in subpart (a).

(c) See documents identified in interrogatory 3(c). Other documents produced in this litigation may also refer to those facts.

(d) See documents identified in answer 3(c). Other communications relating to those facts may also have occurred.

QUESTION:

5. With respect to the allegation in paragraph 6 of your Reply that, "The hold harmless agreement is unenforceable and void as ultra vires the City and as against public policy and the police powers doctrine;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

5. (a) The hold harmless agreement, as construed by Reilly Tar, relieves Reilly Tar from its liability in the discharge of an absolute duty imposed by law for the protection of others. The power of the City to protect the public health and safety cannot be bartered or contracted away. Nor can the City agree to undertake a private duty which the City, through its police power, can compel the private party to perform. The hold harmless agreement, as now construed by Reilly, would work to abrogate the City's police power to protect the public health by limiting the City's ability to so protect the public health and by causing the City to undertake financial responsibility for a threat to public health which Reilly is obligated to bear. Reilly Tar had constructive notice that the City could not be held to a

contract that bartered away the City's obligation to protect the public health.

(b) None.

(c) Documents which refer or relate to the facts referred to in subpart (a) include the following. Other documents produced in this litigation may also refer to those facts.

Purchase Agreement, April 14, 1972, doc. no.  
460000479-186, 40000153-162, 40000176-182.

Hold Harmless Agreement, June 19, 1973, doc. no.  
4000781-82.

(d) None.

QUESTION:

6. With respect to the allegation in paragraph 7 of your Reply that "The City's assent to enter into the Agreement for Purchase of Real Estate and the hold harmless agreement was induced by Reilly Tar's assertions . . . that the products of its operations were not harmful to health or to the public welfare;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

6. (a) See answer to interrogatory 7. In addition, Reilly Tar knew that compounds other than phenols were present in coal tar and creosote which could present an endangerment to

public health. Reilly Tar also knew that the City and State were concerned only with phenols, a compound which did not present a health risk to the City's drinking water supply. Reilly Tar did not advise the City or the State that other more harmful compounds were present in creosote and coal tar and did not advise the State or the City that tarry material from its operations were in the Reilly Tar deep well. See also answers to interrogatories 3, 11 and 12.

(b) See answers 7(b), 3(b), 11(b) and 12(b). Other persons may also have knowledge of the facts referred to in subpart (a).

(c) See answers 7(c), 3(c), 11(c) and 12(c). Other documents produced in this litigation may also refer to the facts set forth in support (a).

(d) None that the City is presently aware of.

QUESTION:

7. With respect to the allegations of paragraph 7 of your Reply that "The City's assent to enter into the Agreement For Purchase of Real Estate and the hold harmless agreement was induced by Reilly Tar's assertions . . . that the then existing soil contamination and contamination of the marshy area south of the Reilly Tar property would naturally improve over time and presented no threat to the drinking water supply of the City; that there was no contamination of groundwaters by it;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

7. (a) For many years prior to 1970, and for years after 1970, Reilly Tar continually denied that it had contaminated the City's drinking water supply. Subsequent to the filing of the complaint in the 1970 litigation, Reilly Tar made numerous representations to the City to the effect that, if any pollution of the ground or waters existed, it was normal and not dangerous to health. For example, on October 13, 1970, Reilly Tar advised the City and the State that the products of its operations had not penetrated the soils. Thus, the products could not reach the drinking water supply. In December 1970, Reilly Tar informed the City and the State that natural forces would clean up any contaminants in the marshy area and that creosote oil did not leach. See also answer to interrogatory 6.

(b) The following persons have knowledge of the facts referred to in subpart (a). Other persons may also have knowledge of those facts.

Harold Horner (identity known to Reilly)

Carleton B. Edwards (identity known to Reilly)

W. J. McLellan (identity known to Reilly)

R. L. Rademacher (identity known to Reilly)

Herbert L. Finch

R. J. Boyle

Thomas J. Ryan

(c) Documents which refer or relate to the facts referred to in subpart (a) include the following. Other documents produced in this litigation may also refer to those facts.

Memorandum of P. C. Reilly to R. L. Rademacher, May 12, 1933, doc. no. 302961.

Memorandum of R. L. Rademacher to P. C. Reilly, June 20, 1933, doc. no. 302973.

Report of Mr. Kempe, May, 1938, doc. no. 303007-10.

Memorandum of C. B. Edwards to W. J. McLellan, September 17, 1938, doc. no. 303017-18, 303174-05.

Memorandum of C. B. Edwards to W. J. McLellan, November 4, 1940, doc. no. 303051.

Memorandum of Harold Horner to H. L. Finch, February 7, 1962, doc. no. 303079-80.

Memorandum of H. L. Finch to R. J. Boyle, January 8, 1962, doc. no. 301375-77.

Transcript of City Council Meeting, February 19, 1962, doc. no. 449067-72.

Memorandum of Herb Finch to R. J. Boyle, October 15, 1970, doc. no. C 302599-600.

Memorandum of H. L. Finch to T. J. Ryan, December 3, 1970, doc. no. 362772-73.

Memorandum of H. L. Finch to T. J. Ryan, December 14, 1970, doc. no. 108601-604, 301970-73.

(d) See documents identified in answer 7(c). Because discovery has not yet been completed, not all oral communications in regard to the facts can be completely identified at this time.



QUESTION:

8. With respect to the allegations in paragraph 7 of your Reply that "The City's assent to enter into the Agreement For Purchase of Real Estate and the hold harmless agreement was induced by Reilly Tar's assertions . . . that the materials in the soils from its operations were insignificant and would not leach or migrate into the drinking water supply of the City over time;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

8.(a)-(d) See answers to interrogatories 7(a)-(d).

QUESTION:

9. With respect to the allegations in paragraph 7 of your Reply that "The City's assent to enter into the Agreement For Purchase of Real Estate and the hold harmless agreement was induced by Reilly Tar's assertions," state with particularity each such assertion not already referred to in Interrogatories 6, 7 and 8 above, and for each such assertion:

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

9. (a)-(d) It is expected that additional facts will be revealed in future discovery. In addition, please refer to the depositions taken to date.

QUESTION:

10. With respect to the allegations in paragraph 8 of your Reply that "Reilly Tar knew at the time of the negotiations for the Agreement For Purchase of Real Estate and the hold harmless agreement that the City assumed, there being an absence of knowledge to the contrary, that the raw and finished products of Reilly Tar's operation would not endanger the public health and wefare;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

10. (a) Reilly Tar made numerous representations to the City to the effect that the raw and finished products of Reilly Tar's operations would not endanger public health and welfare, as set forth in answer to interrogatory 7. Since 1917, and throughout the period of negotiations, Reilly Tar was in control of the property. Moreover, it had the scientific capacity and expertise to determine the compounds in its products and whether they were harmful to health. The City did not have that capacity

nor expertise. See answer to interrogatory 7. Reilly Tar had knowledge that the State, and thus the City, believed that there was no threat to public health and welfare resulting from Reilly Tar's operations in St. Louis Park. Reilly Tar's knowledge is further evidenced by the City's elimination, during the course of negotiations, of any requirement that Reilly Tar indemnify the City. If the City had known that the raw and finished products of Reilly's operations endangered public health and welfare, it would not have entered into the purchase agreement and hold harmless agreement.

(b) The following persons have knowledge of the facts referred to in subpart (a). Other persons may also have knowledge of those facts.

NON-RESPONSIVE

(c) Documents which refer or relate to the facts referred to in subpart (a) include the following. Other documents produced in this litigation may also refer to those facts.

Memorandum of Reilly Tar, undated, doc. no. 40000213, 306433.

Memorandum of William A. Justin to Herbert L. Finch, April 21, 1970, doc. no. 302465.

Memorandum of William A. Justin to Herbert L. Finch, April 21, 1970, doc. no. 302404.

Terms of Real Estate Offer, 1971, doc. no. 306433, 40000213.

Memorandum of Herb Finch to T. J. Ryan, February 13, 1971, doc. no. 301525-27.

Offer to Purchaser, July 30, 1971, doc. no. 40000169-171, 40000207-209, 40000199-201.

Letter of Thomas Reiersgord to Chris Cherches, with Purchaser Agreement attached, January 20, 1972, doc. no. 208261, 40000203-206, 402166.

Offer to Purchase, March 29, 1972, doc. no. 40000188-192.

Purchase Agreement, April 14, 1972, doc. no. 4600479-486, 40000153-162, 40000176-182.

See also documents identified in answers 3(c) and 7(c).

(d) See documents identified in answers 3(c), 7(c) and 10(c). Other communications may also refer to the facts set forth in subpart (a).

QUESTION:

11. With respect to the allegations in paragraph 8 of your Reply that "Reilly Tar knew, however, and failed to disclose to the City, or to the State of Minnesota, that chemical compounds were present in the raw and finished products of its operation which were harmful to health;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

11. (a) Reilly Tar knew there were tarry materials in the deep well and failed to advise the City and the State of that fact. See answer to interrogatory 12. Mr. Carl Leshner, a chemical engineer employed by Reilly Tar, has testified that prior to 1974, he was aware that some of the components of coal tar were toxic and had toxic effects. Mr. Hennessey has testified that, if certain chemical compounds found in coal tar or creosote entered the drinking water supply, they could create a health problem. Other members of Reilly's management have testified that they were aware of the carcinogenic characteristics of coal tar and creosote oil long before 1972. The City and the State were never advised of such facts.

(b) The following persons have knowledge of the facts referred to in subpart (a). Other persons may also have knowledge of those facts.

NON-RESPONSIVE

See also persons identified in answer 12(b)

(c) Federal Regulations regarding hazardous waste from specific sources, state deposition exhibit 83. See also documents identified in answer 12(d). Other documents produced in this litigation may also refer to the facts set forth in subpart (a).

(d) None that the City is presently aware of.

QUESTION:

12. With respect to the allegations in paragraph 9 of your Reply that "Reilly Tar further knew and failed to disclose that at least one of the deep wells on its plant site was in fact contaminated with a tarry material;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

12. (a) That the Republic Deep Well was contaminated with a tarry material had been known to Reilly Tar for many years prior to the 1970 litigation. For example, in 1958, Mr. Holstrom, the plant manager at St. Louis Park, reported to Reilly Tar's headquarters that the well had become contaminated with tar. Again, in 1970, it was reported that the deep well was bringing a

tar substance to the surface. Also, please refer to the deposition of Thomas P. Renner. The City and the State were not advised of the tarry materials in the Deep Well.

(b) The following persons have knowledge of the facts referred to in subpart (a). Other persons may also have knowledge of those facts.

NON-RESPONSIVE

(c) Documents which refer or relate to the facts referred to in subpart (a) include the following. Other documents produced in this litigation may also refer to those facts.

Memorandum of A. E. Larkin to P. C. Reilly,  
414133, doc. no. 302977-79.

Memorandum of H. L. Holstrom to Harold Horner,  
March 5, 1958, doc. no. 100690-931.

Memorandum of Herb Finch to C. B. Edwards, August  
31, 1960, doc. no. 100576.

Memorandum of Herb Finch to Dr. Wheeler, March 2,  
1970, doc. no. 301865-66, 301792-93.

(d) None that the City is presently aware of.

QUESTION:

13. With respect to the allegation in paragraph 9 of your Reply that "This well was as deep as, and in some instances deeper

than, the aquifers used by the City as its source for public drinking water;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

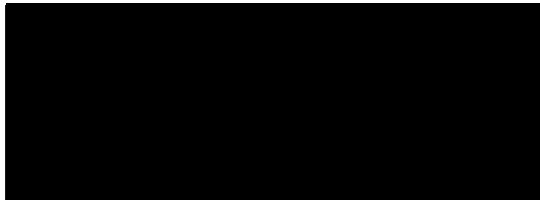
(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

13. (a) Internal memoranda of Reilly Tar indicate the well was originally drilled to a depth in excess of 900 feet. Please refer, in addition, to the testimony of Thomas Renner. Aquifers used by the City of St. Louis Park as a source of public drinking water supply are, in some instances, at elevations more shallow than those of Reilly Tar's deep well.

(b) The following persons have knowledge of the facts referred to in subpart (a). Other persons may also have knowledge of those facts.



(c) Documents which refer or relate to the facts referred to in subpart (a) include the following. Other documents produced in this litigation may also refer to those facts.



E. H. Renner & Sons Well Log, June, 1908, doc. no. 50007004.

Memorandum of A. E. Larkin to P. C. Reilly, April 4, 1933, doc. no. 302977-979.

Memorandum of W. J. McLellan to C. B. Edwards, October 14, 1940, doc. no. 303052.

(d) None that the City is presently aware of.

QUESTION:

14. With respect to the allegation in paragraph 10 of your Reply that "Any agreement under which Reilly Tar claims a right of indemnification or contribution is void because such agreement was induced by representations not in accord with the facts and by failure to disclose material facts,"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

14. (a)-(d) See answers to interrogatories 7, 10, 11, 12 and 13.

QUESTION:

15. With respect to the allegation in paragraph 11 of your Reply that "The counterclaim fails to state a claim upon which relief can be granted;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

15. (a)-(d) See answers to interrogatories 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13.

QUESTION:

16. With respect to the allegations in paragraph 12 of your Reply that "Any flooding of the Reilly Tar property was the result of the natural drainage of waters to low-lying lands;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

16. (a) The plant site was a natural pathway for the drainage of surface waters. The land north of the plant was at least 20 feet higher than the plant site, which was higher than the land to the south of the plant. Water would naturally flow from the north of the plant, across the plant to the lower land to

the south of the plant. Internal memoranda of Reilly Tar indicate flooding of the site occurred as early as the 1930's.

(b) The following persons have knowledge of the facts referred to in subpart (a). Other persons may also have knowledge of those facts.



(c) Documents which refer or relate to the facts referred to in subpart (a) include the following. Other documents produced in this litigation may also refer to those facts.

Memorandum of H. L. Danz to T. E. Courtney,  
October 21, 1938, doc. no. 303023.

(d) None that the City is presently aware of.

QUESTION:

17. With respect to the allegations in paragraph 12 of your Reply that "The City is immune from any liability arising out of its legislative, governmental and discretionary decisions regarding the order and progress of storm sewer improvements within the City;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

17. (a) See answer to interrogatories 1, 16 and 19.

(b) The following persons have knowledge of the facts referred to in subpart (a). Other persons may also have knowledge of those facts.

Richard Koppy  
Director of Public Works  
City of St. Louis Park  
5005 Minnetonka Boulevard  
St. Louis Park, MN

Chester Harrison, City Engineer  
Public Works Department  
City of St. Louis Park  
5005 Minnetonka Boulevard  
St. Louis Park, MN

Vernon Tollefsrud (retired)  
Public Works Department  
City of St. Louis Park  
5005 Minnetonka Boulevard  
St. Louis Park, MN

Chris Cherches

See also persons identified in answer 16(b).

(c) See documents identified in answer 16(c). Other documents produced in this litigation may also refer to the facts set forth in subpart (a) of interrogatories 1, 16 and 19.

(d) None that the City is presently aware of.

QUESTION:

18. Describe in detail each legislative, governmental, discretionary or other decision regarding the order and progress of storm sewer improvements within the City from 1917 to the present which in any way related to or had an effect on the Reilly

site, and for each such decision, identify the persons involved in making the decision and any documents, oral communications, or other events which refer or relate to the decision.

ANSWER:

18. In 1962, St. Louis Park began a City-wide storm sewer construction program. City Project no. 66-17 was the first storm sewer constructed for the central area of the City. This storm sewer was installed in 1966 with the approval of the St. Louis Park City Council.

The Republic Creosote storm sewer (Project no. 72-43) was proposed in 1972 in conjunction with the City's plans to redevelop the site for multi-family dwellings. At that time, the surface water runoff was discharged directly into Minnehaha Creek. As stated in answer to interrogatory 1(a), development of the storm sewer to service the area including the Reilly Tar site was impeded during Reilly Tar's ownership of that site because of concern that the contaminated soils on the site would pollute any storm sewer system. To avoid further contamination of Minnehaha Creek, the City coordinated its efforts to install a storm sewer system with the MPCA, MDH and the Minnehaha watershed district.

In October, 1972, the City selected the engineering firm of Orr-Schelen-Mayeron & Associates, Inc. to design the storm sewer system for the central portion of the City. Initially, the primary requirement of the design was to meet the specific effluent discharge requirements of the Minnehaha watershed district. The MPCA and the MDH also required certain design

features including lined settling basins, a treatment plant and soil excavation to be completed prior to the installation of the storm sewer. When the severity of the contamination of the Reilly Tar site became more apparent, the MPCA required the City to apply for a NPDES Permit and a MPCA permit for land-farming.

Pursuant to the NPDES Permit requirements, the City submitted a monitoring plan to the MPCA for storm sewer discharge into Minnehaha Creek. The Minnehaha Creek Watershed District approved the monitoring plan in August, 1973, and the MPCA approved the City's NPDES permit application in November, 1974. Construction of the storm sewer began in 1975 and was completed in 1976. SERCO Laboratories was selected by the City in 1976 to monitor samples and analyze discharge into the storm sewer system until such time as deemed appropriate by the MPCA. See also projects identified below.

The following persons participated in the decision-making process outlined above:

NON-RESPONSIVE

Larry Breimhurst  
SERCO Laboratories  
1722 Terrace Drive  
St. Paul, MN

NON-RESPONSIVE

Harold D. Field, Esq.  
Leonard, Street & Deinard  
1200 National City Bank Bldg.  
510 Marquette Avenue  
Minneapolis, MN

NON-RESPONSIVE

Bob Criswell, formerly with MPCA

NON-RESPONSIVE

Wayne Long, Consulting Engineer  
Orr-Schelen-Mayeron  
& Associates, Inc.  
2221 E. Hennepin Avenue  
Minneapolis, MN

NON-RESPONSIVE

Maynard Kays, former water superintendent  
9804 Teakwood Drive  
Sun City, AZ

NON-RESPONSIVE

NON-RESPONSIVE

Frank Fleetham, former council member  
City of St. Louis Park  
3252 Jersey Avenue South  
St. Louis Park, MN

NON-RESPONSIVE

A. H. Manzardo, former chief  
Permit Branch, Region V, EPA  
230 South Dearborn  
Chicago, IL

NON-RESPONSIVE

Documents that refer or relate to the facts set forth above include the following. Other documents produced in this litigation may also be relevant.

40000612-615, 50006742, 50006678, 510006742,  
40000700-703, 2900031-35, 40000688, 3900016-24,  
40000068-72, 4600155, 4100075, 2100050-56,  
50002069-2083, 306232-234, 3400117, 50006681-6683,  
50006684-6698, 50006699-6706, 50006707-6712,  
50018143-18149, 50018183-18198, 50018200-18217,  
50018239-18243, 50018639-18690, 50018691-18706,  
50006742, 50006675-6678, 50006679-6698, 50006699-6712,  
40000529-542, 40000452-454, 40000610-615, 40000448-449,  
40000346-354, 40000104-106, 40000270-273, 40000313-325,  
40000608-609, 50000160-61, 40000607, 40000483,  
40000575, 40000557-559, 40000555-556, 40000565-569,  
40000560-563, 40000471-482, 40000553-554, 9810372-377,  
9600777-788, 9600789-804, 9810378-382, 9600812,  
9600816-817, 9600747-757, 9600818-821, 9600822-842,  
9600758-776, 9600843-845, 9600846-847, 9600859-862.

The following documents will be produced to Reilly Tar on Monday, August 29, 1983 at 9:30 a.m. at the St. Louis Park City Hall, 5005 Minnetonka Blvd., St. Louis Park, Minnesota.

Project #65-45A Storm sewer construction  
Cavell Avenue (1965)  
50013379-50013512

Project #72-06 St. Louis Park Water Study by OSM (1972)  
50013513-50013898

Project #72-28 Louisiana Avenue Design and Construction,  
Watermain Extension and Grading West 32nd and  
Louisiana Avenue (1972)  
50013513-50013898

Project #72-43 Louisiana Storm Sewer Construction Contract with  
Lametti & Sons (1972)  
50014399-50015359  
50015717-50015740  
50017533-50017542A  
50017543-50017547  
50017550-50017561A  
50017735-50017742  
50017759-50017765



50017879-50017883  
50017888-50017903  
50017920-50017922  
50017963-50017978  
50017979-50018086  
50018546-50018627  
50018709-50018780

Project #73-07     Watermain Construction Trunk Highway 18 and 22nd  
Street (1973)  
50013379-50013512

Project #73-10     Watermain Construction Cedar Lake Road at Vernon  
Street (1973)  
50013379-50013512

Project #73-15     Sanitary Sewer Construction on Rhode Island Avenue  
50013379-50013512

Project #73-24     Sanitary Sewer Construction  
Louisiana Avenue (1973)  
50010038-50012051

Project #73-26     Construction of Watermain, Sanitary and  
& 73-27     Storm Sewers  
West 28th Street (1973)  
50015892-50016107  
50016249-50016374  
50016376-50016452  
50016453-50016570  
50016571-50016600  
50016601-50016636

Project #73-28     Sanitary Sewer Construction  
Cavell Avenue (1973)  
50013379-50013512

Project #73-33     Sanitary Sewer Construction  
Cedar Lake Road (1973)  
50013379-50013512

Project #73-34     Watermain Construction  
Walker Street (1973)  
50013379-50013512

Project #73-38     Construction of Watermain and Sanitary Sewer  
Forest Lane (1973)  
50013379-50013512

Project #73-48     Sanitary Sewer extension at 3000 Block  
Monterey Avenue  
50013379-50013512

Project #74-21 Watermain Looping  
West 36th and Trunk Highway 100 (1974)  
50013199-50013201

Project #74-20 Watermain Construction Trunk Highway 7  
50013187-50013198

Project #74-24 Redevelopment  
& 74-25 Oak Park Village (1974)  
50013040-50013060  
50017618-50017707

Project #74-36 Watermain Construction  
West 32nd from Oregon to Kentucky Avenue (1974)  
50013216-50013230

Project #74-46 Lift Station Improvement at 32nd and  
Oregon Avenue (1974)  
50012816-50013039

Project #75-12 Well #5 Repair/Installation of  
Turbine Pump (1975)  
50017152-50017207

Project #75-26 Watermain Looping  
Franklin between Texas Avenue and Penn Ave. (1975)  
50013202-50013204

Project #75-28 Watermain Looping Central City (1975)  
50013205-50013215

Project #77-61, Construction of Storm Sewer, Sanitary Sewer and  
78-01, 78-03, Street Paving in Shelard Park at Boone Avenue and  
78-33 & 78-37 36th Street  
50007171-50007308  
50007966-50008526

Oral communication or events that refer or relate to the facts set forth herein are discussed in the documents identified above. Other communications also may have referred to those facts.

QUESTION:

19. With respect to the allegations in paragraph 13 of your Reply that "Reilly Tar assumed the risk of any harm from flooding of its property because with full knowledge that its lowlying property was subject to flooding it nevertheless failed to design its basins with sufficient capacity to accommodate those waters and failed to prevent those waters from entering its basins;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

19. (a) Reilly Tar knew that its property was situated in a natural drainage pathway for surface waters. See answer to interrogatory 16. Despite its knowledge, Reilly Tar took no corrective measures. Reilly Tar's engineering department never produced a remedy for the flooding, although such a remedy was feasible. The settling basin was not designed to accommodate flood waters. Trenching or diking the property was dismissed as being too costly. Other proposals to divert surface water floods also were not pursued.

(b) The following persons have knowledge of the facts referred to in subpart (a). Other persons may also have knowledge of those facts

NON-RESPONSIVE

(c) None that the City is currently aware of.

Documents produced in this litigation may refer to the facts set forth in subpart (a).

(d) The City is aware that such communications occurred concerning the above-stated facts and that such communications involved the persons listed above in answer 19(b), but is not knowledgeable of the specific dates of and all the parties to the communications.

QUESTION:

20. With respect to the allegation in paragraph 14 of your Reply that "Any harmful consequences arising from the flow of surface waters across the Reilly Tar property is the result of the fault of Reilly Tar;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

20. (a)-(d) See answer to interrogatory 19(a)-(d). Reilly Tar could have diverted or controlled the flow of surface water across its property but chose not to.

QUESTION:

21. With respect to the allegations in paragraph 15 of your Reply that "All acts of the City affecting the flow of surface water were solely to facilitate the flow of water in a natural course of drainage over and across the property previously owned by Reilly Tar,"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

21. See answers to interrogatories 16 and 22. The acts of the City did not change the natural course of flow as that affected the Reilly Tar property.

QUESTION:

22. Identify and describe in detail all acts of the City from 1917 to the present which affected the flow of surface water on or toward or away from the Reilly site, and for each such act identify each person who has or who claims to have knowledge of facts relating to the act, and further identify each document, oral communication, or other event which refers or relates to such act.

ANSWER:

22. See answers to interrogatories 18 and 26. The City makes no comment by this answer regarding whether such activity referenced affected the flow of surface waters.

QUESTION:

23. Identify and describe in detail all acts of the City from 1917 to the present which affected the flow of groundwater under or near the Reilly site, and for each such act, identify each person who has or who claims to have knowledge of facts relating to the act, and further identify each document, oral communication, or other event which refers or relates to such act.

ANSWER:

23. None, except to the extent that this might occur as a result of use of City wells.

QUESTION:

24. With respect to the allegation in paragraph 15 of your Reply that "the property previously owned by Reilly Tar . . . is the natural depository of all waters being discharged thereon;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

24. (a)-(d) See answer to interrogatories 16(a)-(d).

QUESTION:

25. With respect to the allegation in paragraph 16 of your Reply that "all construction activities on or near the Reilly Tar property were undertaken pursuant to permit from or in close coordination with the State of Minnesota;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

25. (a)-(d) See answer to interrogatories 26(a)-(d).

QUESTION:

26. Identify and describe in detail each construction activity from 1917 to the present on or near the Reilly site, and for each such activity;

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

26. (a) Reilly Tar occupied and controlled the site from 1917 to June 19, 1973. Reilly Tar is in a better position to determine the construction activities for that period of time.

In addition to those projects referred to in answer to interrogatory 18, the following projects were constructed on or near the Reilly site. Those documents that concern each project are identified by document number and will be produced to Reilly Tar on August 29, 1983. The documents detail each construction project enumerated below.

Project #76-06, Eliot Park and Northside Park Area Construction  
76-34, 78-02, (1976-1978)  
78-06, 78-34, 50008818-50009010, 50009265-50009447  
& 78-36

Project #78-12 Renner Well Closure, 29th Street and Idaho Avenue  
(1978)  
50007029-50007170

Project #78-21 Paving, 2900 Block of Alabama (1978)  
50009015-50009121  
50009265-50009447

Project #79-48 Hinckley Well Closure (1979)  
50007309-50007424

Project #79-49 Landscaping/Construction Lots 9 & 10  
Oak Park Village (1979)  
50015552-50015556  
50015557-50015590  
50015591-50015640  
50016637-50016650  
50017253-50017303  
50017304-50017308  
50017208-50017251  
50017717-50017734

Project #80-05 Watermain Construction  
Library Lane (1980)  
50007757-5007965A

Project #80-10, Construction at Northwest Asphalt, Inc.  
81-10 & 81-18 Walker Street and West Lake Street  
50009448-50010035

Project #80-11 Street Lighting/Construction  
& 80-11A Cedar Lake Road to the Jewish Community Center  
(1980)  
50012052-50012156

Project #80-12 Street Lighting Construction  
Gorham Industrial Area (1980)  
50012157-50012214

Project **NON-RESPONSIVE**

Project #80-17 Street Lighting Construction  
Texas and Aquila Avenue  
50012215-50012268

Project #80-25 Construction of a trail across the Hennepin  
County Library lot (1980)  
50007625-50007678

Project #80-26 Installation of Lighting System in Library  
Parking Lot (1980)  
50012316-50012326



Project #80-30	Lighting East City Hall (1980) 50012327-50012359
Project #80-40	Construction Louisiana Avenue Extension (1980) 50018485-50018540
Project #80-47	Lighting Fred G. Anderson (1980) 50012360-50012364
Project #80-48	Lighting Construction at Browndale Wolf and Pennsylvania Parks (1980) 50012365-50012371
Project #80-90	Paving, Curb & Gutter Construction Library Lane (1980) 50007425-50007511 50007569-50007624
Project #81-46	Landscaping Oak Park Village (1981) 50008529-50008721
Project #81-64	Landscaping Louisiana Avenue (1982) 50013061-50013186
Project #82-66 & 82-17	Street Construction Louisiana Avenue, Gorham to West 29th Street (1982) 50016651-50017138
Project #82-32	Street Lighting Louisiana Avenue (1982) 50015384-50015432 50015479-50015546 50016637-50016650

The following construction activities near or on the Reilly site were coordinated with the State: excavation of the Reilly site; construction in regard to Trunk Highway 100 in St. Louis park; and construction for the Oak Pack Village project and other redevelopment of the Reilly site. Construction of the extension of Louisiana Avenue and well abandonment was likewise coordinated with the State. See also answer to interrogatory 18.

(b) The following persons have knowledge of the facts referred to in subpart (a). Other persons may also have knowledge of those facts.

Richard P. Braun, Commissioner  
Minnesota Department of Transportation  
Transportation Building  
St. Paul, MN

George P. Peterson, M.D.  
former Commissioner of Health  
MDH

William Thibault

Irving Stern, former Mayor  
City of St. Louis Park  
1667 Virginia Avenue South  
Minneapolis, MN

Joseph F. Grinnell, former  
Chairman of Citizen's Board  
MPCA

Sandra Gardebring, Executive Director  
MPCA  
1935 County Road B-2  
Roseville, MN

John W. Elwell, former City Manager  
City of St. Louis Park

Gordon W. Meyer  
Program Development Chief  
Solid & Hazardous Wastes Div.  
MPCA

Richard Ferguson, formerly with  
Division of Water Quality  
Site Response Group  
Solid & Hazardous Waste Div.  
MPCA

John Murphy  
Minnesota Department of Transportation  
Transportation Building  
St. Paul, MN

James Harrington, Commissioner  
Minnesota Department of Transportation  
Transporation Building  
St. Paul, MN

Charles R. Kenow, Coordinator  
Environmental Review Program  
Environmental Quality Board  
Capitol Square Building  
550 Cedar Street  
St. Paul, MN 55101

Roger DeRoos, Director  
Division of Environmental Health  
MPCA  
1935 W. County Road B-2  
Roseville, MN

Lovell E. Richie  
Senior Executive Officer  
Division of Environmental Health  
MPCA  
1935 W. County Road B-2  
Roseville, MN

Edwin H. Ross  
Environmental Health Division  
MDH  
717 Southeast Delaware Street  
Minneapolis, MN

Dale L. Wikre, Acting Director  
Division of Solid Waste  
MPCA  
1935 W. County Road B-2  
Roseville, MN

Art Engelbrecht  
former Chairman of  
Citizen's Board  
MPCA

NON-RESPONSIVE

Terry M. Hoffman, former  
Executive Director  
MPCA

Phyllis W. McQuaid, former  
Mayor of City of St. Louis Park

David Gray  
Research Scientist Senior Supervisor  
Division of Environmental Health  
MDH  
717 Southeast Delaware Street  
Minneapolis, MN

Richard Wade, Ph.D., M.P.H., Director  
Division of Environmental Health  
MDH  
717 Delaware Street Southeast  
Minneapolis, MN

Donald Albin, District Chief  
USGS  
702 Main Post Office  
St. Paul, MN

Richard Bartlett, Chief  
Groundwater Protection  
EPA

Richard Koppy, Director  
Public Works  
City of St. Louis Park  
5005 Minnetonka Blvd.  
St. Louis Park, MN

Dudley Moylan, Vice Chairman  
Housing & Redevelopment Authority  
City of St. Louis Park  
5005 Minnetonka Blvd.  
St. Louis Park, MN

NON-RESPONSIVE

James Kinsley, formerly with  
MPCA

Sarah P. Tufford  
Minnesota Department of Natural Resources  
Box 32, Centennial Building  
St. Paul, MN

William Crawford, District Director  
District No. 5  
Minnesota Department of Transportation  
2055 North Lilac Drive  
Golden Valley, MN

E. A. Hickok  
Hickok & Associates  
545 Indian Mound  
Wayzata, MN

Michael P. Convery  
Division of Environmental Health  
MDH  
717 Southeast Delaware Street  
Minneapolis, MN

NON-RESPONSIVE

James Brimeyer, City Manager  
City of St. Louis Park  
5005 Minntonka Blvd.  
St. Louis Park, MN

Carleton Moore, architect  
Public Works Department  
City of St. Louis Park  
St. Louis Park, MN

See also persons named in the documents identified in answer 26(c). See also persons identified in answer 18.

(c) To identify all documents concerning the facts set forth in answer 26(a) would be burdensome to the City. Notwithstanding this objection, the City refers Reilly Tar the following documents which concern the facts set forth in answer 26(a):

- (i) Documents that concern construction on or near the Reilly site.

50018091-18102, 50015641-15653, 50018441-18453,  
50015741-15817, 50018432-18439, 50018219-18238,  
50018292-18296, 40000223-224, 50006724-6737,  
50006738-6741, 40000786, 40000432-435, 40000439-440,  
40000748, 40000624-628, 300639-300640, 300663-635,  
50004489, 50004485-4486, 50004452-4456, 40000704-705,  
50004462, 9600001-9600026, 50004487, 50006748-6752,  
50004624-4625, 50000450-451, 50005553-5555,

50006763-6770, 50006778-50006777, 50006779-6786,  
50006810-6818, 50000771-772, 50006824-6836, 50005396,  
50000776, 50001998-1999, 50002566-2567, 50006844-6860,  
50002011-2018, 50006874-6875, 50003814-3815,  
50003827-3829, 50002725-2741, 50018781-18816,  
50004330-4333, 304460-462, 40000651, 40000173,  
40000678, 50004485, 40000223-224, 50005179-5189

(ii) Documents that concern coordination with or approval  
from the State:

9810239; 9810240-245; 9810236; 6700020-25; 9810211-213;  
9600524-529; 9600529-533; 9600534-536; 9810070-9810076;  
9600871-872; 9600721-723; 9610330-333; 9810111-113;  
981088-090; 9810095-097; 9800538-540; 9600671-673;  
9810274; 9600712-715; 9810207; 9600873-875;  
9600903-911; 9600912-913; 9601104-05; 6831359-387;  
9505613-625; 9810069; 9810070-80; 9810088-92;  
9810209-210; 9810237-238; 9810239; 9810240-248;  
9810253-255; 9810270-273; 9810274-277; 9820601-602;  
9820705-718; 9820028-30; 9800577-78; 9800018-25;  
9800028-046; 9800052-093; 9800100-120; 9800125-128;  
9800130-133; 9800137-147; 9800150-152; 9800316-317;  
50006625-629; 40000750; 50006630-642; 50006643;  
4000740-741; 40000739; 4000738; 500066-4446;  
50006651-52; 50006653-57; 40000023-25; 40000044;  
40000032-37; 40000808; 50006659-664.

See also documents identified in answer 18.

(d) See documents identified in answer 26(c) and 18(c).

QUESTION:

27. With respect to the allegation in paragraph 17 of your Reply that "The contamination of the groundwaters is the result of Reilly Tar's willful negligence which bars any indemnity or contribution claims it might have," describe in detail (1) the "contamination of the groundwaters" to which you refer, and (2) how this is "the result of Reilly Tar's willful negligence, and

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

27. (a) The "contamination of the groundwaters" is contamination of the underground waters of the City or of the City's drinking water supply by the raw and finished products of Reilly's operations in St. Louis Park, which is the subject of this litigation.

Reilly Tar was in control of its plant site from 1917 to 1973. In 1982, the Republic Deep Well on the site was cleaned. That cleaning revealed that a plug of coal tar and/or its derivatives in the well began at the approximate depth interval of 595 feet and extended down to 740 feet. Those materials were present in the well when Reilly Tar was operating its facility on the site. Reilly Tar did nothing to remove those materials from the well. See also answer to interrogatory 12.

Throughout the period of Reilly Tar's operation of its St. Louis Park facility, Reilly Tar willfully caused the raw and finished products of its operations to be wasted on and deposited in the plant property. It allowed the deep well on its site to stand open and exposed at times. It used abandoned wells on the site to drain creosote products into the ground. It allowed the products and residues of its operations to be dumped on the site. It poorly maintained piping and trenches that carried the products

of its operations on the site, resulting in contamination of the ground on the site. Its above ground and below ground tanks containing the products were not properly maintained, causing unknown quantities of the product to enter the ground below the surface. The cistern that held coal tar was left cracked and in a state of disrepair for many years, causing the soil in the area of the cistern to become saturated with coal tar. Moreover, the cistern was allowed to overflow onto the surrounding ground. The settling basin was not properly maintained, causing compounds of the raw and finished products to be discharged with the plant effluent into the areas surrounding the plant. For many years it had no settling basin and made no effort to treat its effluent. Such practices contributed to the ground water contamination. Reilly Tar management failed, and often refused, to take actions necessary to remedy and end the poor maintenance habits and sloppy practices of the St. Louis Park facility.

(b) The following persons have knowledge of the facts referred to in subpart (a). Other persons may also have knowledge of those facts.

NON-RESPONSIVE



Dr. Frank Mootz

Michael J. Hansel  
Hazardous Waste Division, MPCA  
1935 County Road B-2  
Roseville, MN

Rodney Sigafoos  
E. H. Renner & Sons Company  
6300 Industry Avenue North  
Ramsey, MN

Paul Josephson  
E. A. Hickok & Associates  
545 Indian Mound  
Wayzata, MN

Kenneth Moe  
Job Superintendant,  
Carl Bolander & Sons, Company  
St. Paul, MN

William Bauer  
Job Foreman  
Carl Bolander & Sons, Company  
St. Paul, MN

(c) Documents which refer or relate to the facts referred to in subpart (a) include the following. Other documents produced in this litigation may also refer to those facts.

Report of McCarthy Well Co., December 13, 1934,  
doc. no. 810081.

Memorandum of Carl Leshar, 1962, doc. no.  
303649-653A.

Memorandum of Herb Finch to C. B. Edwards, July  
18, 1962, doc. no. 100418-429.

Memorandum of Herb Finch to Carl Leshar, August  
14, 1964, doc. no. 104326.

Memorandum of Carl Leshar to Herb Finch, September  
15, 1964, doc. no. 104327.

Memorandum of P. E. White to Herb Finch, December  
14, 1966, doc. no. 402050R-51R.

Memorandum of P. E. White, October 24, 1967, doc. no. 20113.

Memorandum of Herb Finch to P. E. White, May 14, 1968, doc. no. 302849-850.

Reilly Tar Work Order, October 30, 1968, doc. no. 200975-78.

Memorandum of T. M. Keprios to Herb Finch, August 10, 1971, doc. no. 224558.

(d) See documents identified in answer 26(c). Other communications also may have referred to the facts set forth in subpart (a).

QUESTION:

28. With respect to the allegation in paragraph 21 of your Reply and Cross-Claim that "Prior to entering into the Agreement For Purchase of Real Estate and the hold harmless agreement, the City consulted with the Minnesota Department of Health and the Minnesota Pollution Control Agency about the consequences of the past pollution from Reilly Tar's operation;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

28. (a) As early as 1968, the City sought assistance from the MPCA to analyze and to cure the pollution caused by Reilly Tar's operations. This request for assistance to determine the

extent of the pollution and necessary curative actions continued until the hold harmless agreement was executed in 1973.

Throughout this period of time, the City consulted with and relied upon the MPCA and MDH in analyzing and approaching the pollution problems presented by Reilly Tar. See also answers to interrogatories 29, 30, 31, 32 and 33.

(b) The following persons have knowledge of the facts referred to in subpart (a). Other persons may also have knowledge of those facts.

NON-RESPONSIVE

Martin Osborn  
Regulatory Compliance Section  
Division of Air Quality  
MPCA  
1935 County Road B-2  
Roseville, MN

NON-RESPONSIVE

Edward Pryzina, formerly with MPCA

(c) Documents which refer or relate to the facts referred to in subpart (a) include the following. Other documents produced in this litigation may also refer to those facts.

NON-RESPONSIVE

Memorandum of George Koonce, May 29, 1969.

Memorandum of MPCA, April 23, 1970, doc. no. 3500009.

NON-RESPONSIVE

Minutes of MPCA Meeting, August 9, 1971, doc. no. 410624-26.

NON-RESPONSIVE

Minutes of MPCA Meeting, December 13, 1971, doc. no. 3400166-168

Memorandum of Larry Anderson, December 14, 1971, doc. no. 1000264-271, 4000673-678, 5000301-306.

Memorandum of Martin Osborn to Tibor Kosa, December 15, 1971, doc. no. 2200019, 4000678.

Memorandum of Martin Osborn to Tibor Kosa, December 15, 1971, doc. no. 40000678.

Memorandum of Harvey McPhee to City Manager, December 27, 1971, doc. no. 5000307.

Memorandum of Larry Anderson, MPCA, January 31, 1972 and February 1, 1972, doc. no. 1000251-252.

Memorandum of Harvey McPhee to City Manager,  
February 2, 1972, doc. no. 50000155, 50005282,  
50000311, 50000312.

Memorandum of Larry Anderson, MPCA, June 14, 1972,  
doc. no. 1000245-246.

Memorandum of Harvey McPhee to William Thibault,  
September 26, 1972, doc. no. 50005281.

(d) On February 1, 1972, Harvey McPhee discussed with George Koonce, MPCA, clean-up of the site, the City's possible acquisition of the Reilly property and the fact that there was no groundwater pollution.

See also documents identified in answer 28(c). Other communications also may have referred to the facts set forth in subpart (a).

QUESTION:

29. With respect to the allegation in paragraph 21 of your Reply and Cross-Claim that "The MDH and the MPCA knew that the City did not have the technical expertise or the authority to make those determinations;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

29. (a) The City did not have the technical capacity -- testing equipment, laboratories, scientists and technicians -- to determine the extent and consequences of the pollution resulting from Reilly's operation in St. Louis Park. The MPCA and MDH were aware of these facts. Because of its lack of technical expertise, the City consulted with and relied upon the state agencies for technical advice and scientific testing. For example, the City consulted with the State to determine which testing method was most sensitive to detecting phenols. See answer to interrogatory 28. Had the data of the testing revealed to the State a threat to public health, those agencies would have reacted in fulfillment of their statutory responsibilities independent of any assistance or consultation that the City might have given.

(b) See persons identified in answer 28(b).

(c) Letter of Russell Frazier to Harvey McPhee, August 24, 1970.

See also documents identified in answer 28(c).

(d) See documents identified in answers 28(c) and 29(c) and communications identified in 28(d).

QUESTION:

30. With respect to the allegation in paragraph 21 of your Reply and Cross-Claim that "The City was advised, in light of the fact that Reilly had ceased its operations, that there was no threat to public health,"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

30. (a) The MPCA advised the City that because Reilly Tar was closing its operations, the air and surface water pollution, the subjects of the 1970 litigation, would be eliminated. The MPCA had further advised the City that because the Mellon Institute and the MPCA had concluded that there was no groundwater pollution, the MPCA foresaw no problems with the City's purchase of Reilly's property. Without groundwater contamination, and with cessation of the air and surface water pollution, the City was led to believe there was no threat to public health after Reilly closed its St. Louis Park operations. These representations and assertions were made by the State before the City executed the purchase agreement, dated April 14, 1972, and the hold harmless agreement, dated June 19, 1973. See also answer to interrogatory 32.

(b) The following persons have knowledge of the facts referred to in subpart (a). Other persons may also have knowledge of those facts.

NON-RESPONSIVE

Edward M. Wiik, former Director  
Division of Air Quality, MPCA  
5028 18th Avenue South  
Minneapolis, MN

NON-RESPONSIVE

(c) Non-privileged documents which refer or relate to the facts referred to in subpart (a) have been previously identified or produced.

(d) On February 1, 1972, Harvey McPhee had discussed with George Koonce, MPCA, the City's possible acquisition of Reilly's property and the fact that there was no groundwater pollution. See documents identified in answer 30(c).

QUESTION:

31. With respect to the allegation in paragraph 21 of your Reply and Cross-Claim that "The City was advised, in light of the fact that Reilly Tar had caused its operations, . . . that there was no public health threat from groundwater contamination;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,



(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

31. See answer to interrogatory 30.

QUESTION:

32. With respect to the allegation in paragraph 21 of your Reply and Cross-Claim that "The City was advised, in light of the fact that Reilly Tar had ceased its operations, . . . that there were no pollution conditions which required substantial curative actions;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

32. (a) Before executing the purchase agreement and hold harmless agreement, the City consulted with and relied on the State agencies to determine the necessary curative actions required for the site. See answer to interrogatory 28. In April, 1971, the City was advised by the MPCA that the Agency would not require excavation of the creosote-saturated soil. Thus, a layer of clean topsoil over the existing soil was believed sufficient to recoup the property for use. In December, 1971, the MPCA recommended that the most heavily saturated soil should be removed

and replaced with clean fill, and certain equipment and drums should be removed from the site if necessary. In terms of curbing future air pollution, the Division of Air Quality believed that, if the Reilly operations were closed down, a general cleanup of equipment and a thin layer of soil over all places where spillage had occurred would eliminate any residual odors from the area. Thereafter, the City suggested to the MPCA that the pipeline, tanks and other equipment on the site be removed and that the southern portion of the property be covered with two feet of sealing clay. Thereafter, the MPCA advised the City that one foot of sealing clay, rather than the two feet suggested, would be sufficient. Further contacts with the Agency indicated that the MPCA would not require reclamation of the saturated soils. In September, 1972, the MPCA advised that 298,000 square feet of the Reilly site should be sealed with clay.

(b) The following persons have knowledge of the facts referred to in subpart (a). Other persons may also have knowledge of those facts.



NON-RESPONSIVE

(c) Documents which refer or relate to the facts referred to in subpart (a) include the following. Other documents produced in this litigation may also refer to those facts.

Memorandum of Larry Anderson, December 14, 1971,  
doc. no. 40000673-677.

Memorandum of Martin Osborn to Tibor Kosa,  
December 15, 1971, doc. no. 40000678.

Memorandum of Larry Anderson, January 31, 1972,  
and February 1, 1972, State is present custodian.

Memorandum of Larry Anderson, June 14, 1972, State  
is present custodian.

(d) See documents identified in answer to  
interrogatory no. 30(c). Other oral communications between the  
State and the City occurred within this period of time; however,  
the specific dates of and parties to each communication are not  
presently known to the City.

QUESTION:

33. With respect to the allegations of paragraph 21 of your  
Reply and Cross-Claim that "The City relied upon these  
representations. It would not have entered into the referenced  
agreements but for the assurances and representations of the MDH  
and the MPCA;"

(a) Fully state the factual basis for this allegation,  
including all facts which support or tend to support this  
allegation,

(b) Identify each person who has or claims to have  
knowledge of the facts referred to in subpart (a) of this  
interrogatory,

(c) Identify each document which refers or relates to  
the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event  
which refers or relates to the facts referred to in subpart  
(a) of this interrogatory.

ANSWER:

33. (a) Prior to execution of the purchase agreement and  
hold harmless agreement the City relied on the assurances and

representations of the agencies. Those agencies knew that, unlike the City, they had the technical expertise and authority to make determinations of the extent of pollution resulting from Reilly Tar's operations and the actions required to cease that pollution. See answers to interrogatories 28, 29, 30, 31, and 32.

Had the MDH and the MPCA believed that different and more extensive responses were necessary that would have impacted in a material way the cost to clean the site, then the property would not, accordingly, have been purchased under the terms of the agreement reached. Had the MDH and the MPCA concluded, in fulfillment of their statutory responsibilities, that the conditions present created a threat to health the City would not have entered into any agreement because the basic assumption that the property could be put to residential and industrial use no longer would have been true.

(b) See persons identified in answers 28(b), 29(b), 30(b), 31(b) and 32(b).

(c) See documents identified in answers 28(c), 29(c), 30(c), 31(c) and 32(c).

(d) See communications identified in answers 28(d), 29(d), 30(d), 31(d) and 32(d).

QUESTION:

34. With respect to the allegations in paragraph 22 of your Reply and Cross-Claim that "The State of Minnesota made these representations knowing, or under circumstances that it should reasonably expect, that the City was acting in reliance upon them to the mutual benefit of the State in solving the air and surfact [sic] water pollution caused by Reilly Tar's operations;"

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

34. (a)-(d) See answers to interrogatories 28, 29, 30, 31, 32 and 33.

QUESTION:

35. With respect to the allegations of paragraph 22 of your Reply and Cross-claim that "The State of Minnesota made these representations . . . knowing, or under circumstances that it should reasonably expect, that the City had been led to believe a dismissal of the air and surface water claims of the State would be given, which claims were the subject matter of the 1970 lawsuit, because Reilly Tar's decision to cease operations mooted those claims;" describe in detail how and by which persons the City had been so led to believe, and

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

ANSWER:

35. (a)-(d) See answer to interrogatory 32. With the closing of the plant by Reilly Tar and the accomplishment of the curative actions contemplated, all known consequences from Reilly Tar's operations would have been remedied. Consequently, there was no further relief to seek by litigation. The litigation would be dismissed because it was moot.

QUESTION:

36. With respect to the allegations of paragraph 22 of your Reply and Cross-Claim that "The State of Minnesota made these representations . . . knowing, or under circumstances that it should reasonably expect, that the City had been led to believe a dismissal of the air and surface water claims of the State would be given, which claims were the subject matter of the 1970 lawsuit, . . . because the City had agreed in principle to undertake those clean-up measures then said to be necessary and adequate," describe in detail how and by which persons the City had been so led to believe, and

(a) Fully state the factual basis for this allegation, including all facts which support or tend to support this allegation,

(b) Identify each person who has or claims to have knowledge of the facts referred to in subpart (a) of this interrogatory,

(c) Identify each document which refers or relates to the facts referred to in subpart (a) of this interrogatory,

(d) Identify each oral communication or other event which refers or relates to the facts referred to in subpart (a) of this interrogatory.

(e) Describe in detail "those clean-up measures then said to be necessary and adequate" which "the City had agreed in principle to undertake," identify who "said" they were "necessary and adequate," state when that was "said," describe how they were "necessary and adequate," and identify all documents, oral communications, or other events referring or relating to "those clean-up measures."

(f) Describe in detail how "the City had agreed in principle to undertake those clean-up measures," identify the person or persons who made the agreement, identify all other persons involved in the making of the agreement, state the agreement and identify all documents, oral communications, or other events relating to the agreement.

ANSWER:

36. See answers to interrogatories 32 and 35.

Dated: August 24, 1983.

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

\_\_\_\_\_, being first duly sworn upon oath, says that he is the \_\_\_\_\_ of the City of St. Louis Park, plaintiff-intervenor herein, that he has read the above and foregoing Answers to Interrogatories and knows the contents thereof, and that the contents and facts therein contained are true and correct to the best of his information, knowledge and belief, and that his information, knowledge and belief is based on facts obtained by others from City records, employees and agents.

\_\_\_\_\_  
Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 1983.

\_\_\_\_\_  
Notary Public

2169B

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing City Of St. Louis Park's Answers to Interrogatories of Reilly Tar & Chemical Corporation was served upon each of the following attorneys at their last known addresses on the 24th day of August, 1983:

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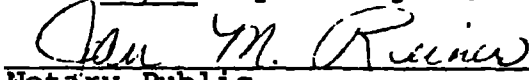
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Attorney for United States

  
Allen Hinderaker

Subscribed and sworn to before me  
this 24<sup>th</sup> day of August, 1983.

  
Notary Public

